LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0636 **Ward:** Harringay

Date received: 03/03/2016

Drawing number of plans: PC/2016/001 and OS

Address: First Floor Rear 2 Queens Parade Green Lanes N8 0RD

Proposal: Certificate of Lawfulness for use as a studio flat

Applicant: Mrs Norma Hegoda

Ownership: Private

Officer contact: Wendy Robinson

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site relates to a three storey, mid-terrace property located on the western side of Green Lanes close to the junction with Falkland Road. The property consists of a ground floor retail unit with residential above. The property use previously included a solicitor's office. The property is not a Listed Building and is not located within a Conservation Area.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/1998/0092 GTD 17-03-98 2 Queens Parade, Green Lanes London Change of use of property from mini cab office with residential on upper floor to solicitors office.

HGY/2003/0399 REF 01-05-03 Hegoda & Hegoda Solicitors 2 Queens Parade, Green Lanes London Change of use of second floor to residential use.

HGY/2014/1150 GTD 17-06-14 2 Queens Parade Green Lanes London Demolition of the existing storage building and construction of single storey extension comprising an ancillary office

HGY/2014/2634 GTD 10-11-14 2 Queens Parade Green Lanes London Change of use from studio flats at Second Floor Level into One Bedroom flat and change of use from Office at First Floor Level into One Bedroom Flat.

HGY/2015/1066 REF 08-06-15 2 Queens Parade Green Lanes London Erection of single storey rear extension over existing ground floor extension

HGY/2016/0634 PENDING Loft Floor Front 2 Queens Parade Green Lanes London Certificate of Lawfulness for use as a studio flat

HGY/2016/0635 PENDING Rear Loft Floor 2 Queens Parade Green Lanes London Certificate of Lawfulness for use as a studio flat

5. RELEVANT LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990 (as amended).

Section 191 of the 1990 Act provides for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:
(1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or
(2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or
(3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or
(4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or
(5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or
(6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or
(7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or
(8) it is development by or on behalf of the Crown; or
(9) the time for taking enforcement action has expired.

“Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to

comply with any condition or limitation subject to which planning permission has been granted.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:
(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—
(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

6. ANALYSIS/ASSESSMENT OF THE APPLICATION

This is not a planning application and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the residential use has been in place for a period in excess of 4 years is, therefore, immune from enforcement action.

The relevant test of the evidence is "the balance of probability" if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate.

The applicant must prove that the use referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 03/03/2012

Information Provided

Information provided	Date and method of verification	Officer's comments
Council Tax bill for period 01/02/12 – 31/03/13	Copy of tax bill dated 08/03/13	Studio 3 First Floor Rear identified separately
Council Housing Benefit	Copy of Decision Notice dated	Studio 3 First Floor Rear identified

Decision Notice	04/10/13	separately
Council Housing Benefit Decision Notice Reason for Calculation	Copy of Calculation letter dated 04/10/13	Studio 3 First Floor Rear identified separately
Council Tax bill for period 23/11/13 – 31/03/14	Copy of tax bill dated 27/11/13	Studio 3 First Floor Rear identified separately
Council Housing Benefit letter	Copy of letter dated 09/01/14	Studio 3 First Floor Rear identified separately
Tenancy agreement between the applicant and Mr Suuppainen from 17/01/14 for 12 month period	Copy of agreement dated 17/01/14	Studio 3 First Floor Rear identified separately
Council Tax reminder	Copy of reminder letter dated 17/01/14	Studio 3 First Floor Rear identified separately
Summons for non payment of Council Tax for period 23/11/13 – 31/03/14	Copy of court summons dated 12/02/14	Studio 3 First Floor Rear identified separately
Tenancy agreement between the applicant and Mr Diaz from 02/08/14 for 12 month period	Copy of agreement dated 30/07/14	Studio 3 First Floor Rear identified separately
Council Tax bill for period 31/07/15 – 31/03/16	Copy of tax bill dated 13/08/15	Studio 3 First Floor Rear identified separately
Summons for non payment of Council Tax for period 31/07/15 – 31/03/16	Copy of court summons dated 09/10/15	Studio 3 First Floor Rear identified separately

Council tax records indicate that Studio 3 has been taxed independently since 22/08/2010.

7. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that Studio 3 First Floor Rear of 2 Queens Parade has been a residential unit for a period of 4 years, has become immune from enforcement action, and is, therefore, lawful.

8. RECOMMENDATION

GRANT CERTIFICATE
Registered No. HGY/2016/0636

Applicant's submissions: PC/2016/001 and OS

The applicant has demonstrated that on the balance of probability that Studio 3 First Floor Rear of 2 Queens Parade has been a residential unit for a period of 4 years, has become immune from enforcement action, and is, therefore, lawful.